

BASEBALL SPECTATOR ASSUMES NORMAL RISK OF FOUL BALL INJURY?

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In the case of *Thurmond v. Prince William Baseball Club, INC.*, No. 020116 (Va. 1/10/2003) the Virginia state supreme court was asked whether a spectator at a minor league baseball game assumed the risk of being struck by a batted foul ball. In resolving this question for the first time, the Virginia high court found a general consensus among courts in other jurisdictions which had considered the issue. As a general rule of law in most jurisdictions, the Virginia supreme court noted that stadium owners or operators of ballfields owe spectators only a "limited duty" of care "to screen the area behind home plate and to offer a sufficient amount of seating for spectators who reasonably may be anticipated to request protected seats in the course of an ordinary game." In this particular case, the state supreme court had to determine whether or not to adopt this majority rule in Virginia.

FACTS OF THE CASE

In August 1997, Thurmond attended a night baseball game conducted by the Prince William Professional Baseball Club, Inc., doing business as the Prince William Cannons (the Cannons), at the G. Richard Pfitzner Stadium (the stadium) in Prince William County. The Cannons are a "Class A" minor league professional baseball team affiliated with the St. Louis Cardinals, L.P. (the Cardinals), of "Major League Baseball." The Cardinals contracted with the Cannons to provide the Cannons with players and coaches as part of the Cardinals' player development program.

In the stadium, spectators were warned of the risk of being struck by objects batted or thrown from the field. Warning signs, measuring three feet by three feet, were posted at entrances to the seating areas. These signs stated: "Be Alert! Objects batted or thrown into the stands may be dangerous." All persons entering the stadium walked past one of these entrances, regardless of the location of their seats.

In addition, the back of each admission ticket contained a printed warning that stated, in relevant part:

The holder of this ticket assumes all risk and danger incidental to the game of baseball . . . including specifically (but not exclusively) the danger of being injured by thrown bats, thrown or batted balls, . . . and agrees that the participating clubs or their officials, agents and players are not liable for injury related from such causes.

Twenty to thirty seats were reserved for each game in the screened area behind home plate for those spectators who requested to be reseated because they were not comfortable sitting in the unscreened areas of the stadium.

Thurmond sat with her family and friends "high in the bleachers" on the third base side of the stadium. This was Thurmond's first visit to the stadium, and she did not know that she

could have requested a seat in the screened area behind home plate. She also did not read the warning printed on the back of the admission ticket because she never had possession of her ticket, which her friends had given to her husband. However, Thurmond remained alert at all times during the game, watching the hitters and batted baseballs.

During the eighth inning, a "line drive foul" ball was batted toward Thurmond. Although Thurmond saw the baseball approaching in her direction, the ball was moving too rapidly to allow her to take any evasive action. The ball struck Thurmond directly on the right side of her face, and she sustained various injuries, including fractures of her facial bones, damage to her right eye socket, and extensive nerve damage.

ALLEGATIONS OF NEGLIGENCE

Thurmond sued the Cannons alleging that she was injured as a result of the defendant's negligence in failing to provide adequate warnings at the stadium and to operate and maintain the stadium in a safe condition to prevent injuries to invitees. In response, the Cannons filed a motion for summary judgment arguing Thurmond assumed the risk of injury as a matter of law when she chose to sit in an unscreened area of the stadium. (In a motion for summary judgment, based upon the agreed upon facts, the Cannons asked the trial court to rule that there was no legal basis for liability and dismiss Thurmond's claims without a trial.)

In opposing the Cannons' summary judgment motion, Thurmond asserted that the issue whether she voluntarily exposed herself to a known risk could not be resolved without her testimony at a trial. In addition, Thurmond questioned the adequacy of the stadium facility and the warnings provided by the Cannons. In so doing, Thurmond asserted that the stadium's field dimensions did not meet the minimum standards specified in the Major League Rules (the rules), which the Cannons' organization was bound to follow by their player development contract with the Cardinals.

Specifically, Thurmond contended that the rules required a minimum distance of 60 feet between home plate and the "backstop," and between the third base line and the spectator stands, and that the stadium did not comply with these requirements. The distance at the stadium between home plate and the "backstop" was 53 feet, eight inches. Although the record did not show the distance between the third base line and the spectator stands, Thurmond's counsel agreed during oral argument in this case that this distance was about "five to six feet" less than the 60-foot requirement.

In response to Thurmond's allegations, the Cannons argued that the rules concerning playing field dimensions and lighting conditions were promulgated to ensure uniformity of conditions for the benefit of the players, not for the safety of the spectators seated in the stands. The Cannons also asserted that the rules merely recommended, rather than required, a distance of 60 feet between the foul lines and the stands, and between home plate and the "backstop."

The trial court awarded summary judgment in favor of the Cannons holding that, as a matter of law, Thurmond assumed the risk of being struck and injured by a batted "foul" ball. Thurmond appealed.

ON APPEAL

On appeal, Thurmond argued that the trial court had erred in granting summary judgment to the Cannons. According to Thurmond, further proceedings in the trial court were necessary to consider the adequacy of the stadium lighting, the field dimensions, and the need for warnings that were not provided by the Cannons. Moreover, Thurmond contended that a full trial was necessary to determine whether she had subjectively appreciated these dangers and, thus, assumed the risk of injury under the circumstances of this particular case.

In response, the Cannons reiterated its position that Thurmond assumed the risk of being injured by a batted "foul" ball "as a matter of law" because "the risk of injury from a batted 'foul' ball was necessarily apparent to Thurmond as a matter of common sense." As a result, the Cannons argued that the stadium lighting, field dimensions, and the content of the warnings Thurmond received were not relevant to the issue of negligence liability and the assumption of risk defense in this particular instance.

APPLICABLE RULE OF LAW

As a general rule, the state supreme court noted that "a person's voluntary assumption of the risk of injury from a known danger operates as a complete bar to recovery for a defendant's alleged negligence in causing that injury."

Application of the defense of assumption of risk requires use of a subjective standard, which addresses whether a particular plaintiff fully understood the nature and extent of a known danger and voluntarily exposed herself to that danger. Thus, the defense of assumption of risk ordinarily presents a jury question, unless reasonable minds could not differ on the issue.

Moreover, the state supreme court found that "the great weight of authority from other jurisdictions" had extended the assumption of risk doctrine to include the following general rule as a matter of law: "A spectator assumes the normal risks of watching a baseball game, which includes the danger of being hit by a ball batted into an unscreened spectator area."

In determining whether to adopt this general rule for application in Virginia, the state supreme court considered "whether a particular plaintiff fully understood the nature and extent of a known danger and voluntarily exposed herself to that danger." As noted by the court, the doctrine of assumption of the risk focuses on the plaintiff's subjective knowledge and appreciation of a particular danger. In the opinion of the court, the risk of being struck by a foul ball was one which is likely to be understood by the ordinary spectator at a baseball game.

No one of ordinary intelligence could see many innings of the ordinary league game without coming to a full realization that batters cannot, and do not, control the direction of the ball which they strike and that foul tips or liners may go in an entirely unexpected direction. One could not hear the bat strike the ball many times without realizing that the ball was a hard object. Even the sound of the contact of the ball with the gloves or mitts of the players would soon apprise him of that.

Accordingly, “when a particular adult spectator of ordinary intelligence is familiar with the game of baseball,” the state supreme court held “that spectator assumes the normal risks of watching a baseball game, including the danger of being hit by a ball batted into an unscreened seating area of a stadium.”

Applying this rule to the facts of this particular case, the state supreme found Thurmond had indeed assumed the risk of being hit by a ball batted into an unscreened seating area of the stadium.

We conclude that reasonable persons could not disagree that Thurmond, who conceded that she remained alert throughout the game and observed hitters and batted balls for more than seven innings before being injured, was familiar with the game of baseball, knew the risk of being injured by a batted ball, and voluntarily exposed herself to that risk by remaining seated in an unscreened area.

On appeal, Thurmond had contended that she did not “knowingly assume” the risk of “the allegedly deficient lighting conditions and playing field dimensions” because these particular risks “were not normal hazards” associated with batted balls. The state supreme court rejected this argument.

First, the field lighting conditions are not material to a resolution of this case because Thurmond conceded in the trial court that she saw the baseball approaching in her direction before it struck her.

Second, the variance in field dimensions was not material to the hazards created by the uncertain course of every batted ball's trajectory, a hitter's lack of control over each ball's direction of travel, or the force with which any batted ball can be hit into an unscreened spectator area. Moreover, Thurmond was not seated in the six-foot area of the spectator stands that she contends should have been part of the playing field. Thus, we hold that Thurmond knew and voluntarily exposed herself to the hazards of the game by remaining in the unscreened area after watching seven innings of play from that unprotected location.

Accordingly, the state supreme court held that “the trial court did not err in awarding summary judgment” to the Cannons, because “Thurmond's assumption of the risk was a complete bar to her recovery in this negligence action.” The state supreme court, therefore, affirmed the trial court's judgment in favor of the Cannons.